

Members

Sen. R. Michael Young, Chairperson
Sen. Luke Kenley
Sen. Lindel Hume
Sen. Richard Young
Rep. John Frenz
Rep. Jerry Denbo
Rep. Phillip Hinkle
Rep. Michael Murphy



ADMINISTRATIVE RULES OVERSIGHT COMMITTEE

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MEETING MINUTES¹

Meeting Date: November 16, 2004
Meeting Time: 9:00 A.M.
Meeting Place: State House, 200 W. Washington
St., Room 401B
Meeting City: Indianapolis, Indiana
Meeting Number: 4

Members Present: Sen. R. Michael Young, Chairperson; Sen. Luke Kenley; Sen. Lindel Hume; Sen. Richard Young; Rep. Jerry Denbo; Rep. Phillip Hinkle; Rep. Michael Murphy.

Members Absent: None.

Senator R. Michael Young, Chairman of the Committee, convened the meeting at 9:05 a.m. Senator Young noted that the meeting's agenda would include a discussion of the following: (1) A bill draft that amends the statute requiring an agency to submit a proposed rule with an estimated economic impact greater than \$500,000 to the Legislative Services Agency (LSA) for review. (2) A bill draft that voids rules adopted by the Division of Disability, Aging, and Rehabilitative Services (DDARS) concerning Home and Community Based Services (HCBS) and requires the promulgation of new rules. (3) An update from the Indiana Department of Environmental Management (IDEM) on efforts to help communities comply with storm water rules ("Rule 13"). (4) A discussion of the

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Committee's Final Report and recommendations.

Discussion of PD 3827

Senator Young presented PD 3827,² a bill draft specifying the factors that an agency must consider in determining whether a proposed rule has an economic impact greater than \$500,000. He noted that the draft was a revised version of PD 3538, which the Committee had considered at its meeting on October 12, 2004. Senator Young explained that the bill would require an agency to take into account a proposed rule's impact on entities that already voluntarily comply with the rule. He suggested that if the Indiana Board of Accountancy had considered the economic impact of its proposed peer review rules³ on CPA firms that voluntarily participate in such programs, the rules would have triggered the \$500,000 threshold requiring a fiscal review by LSA.

Senator Young also reminded the Committee that LSA had expressed concern that agencies often submit a proposed rule for review shortly before the public hearing on the rule. As a result, LSA cannot prepare a fiscal impact statement in time to make it available at the hearing. Instead of altering the 45-day period that LSA has to prepare its statement, Senator Young revised the draft to require an agency to submit the rule to LSA not later than 50 days before the public hearing on the rule. That change would ensure that LSA's fiscal impact statement is available at least five days before the public hearing, even if LSA takes the entire 45 days it is allowed to complete its review.

Following Senator Young's explanation of the bill, Senator Kenley thanked the Chairman for attempting to clarify a statute that he characterized as ambiguous from the time of its enactment. He expressed confidence that Senator Young would continue to refine and improve the bill throughout the legislative process.

Senator Richard Young also acknowledged the Chairman's efforts, but stated that he thought the statute had always been clear on its face. He then asked whether the bill would require an agency to consider the immediate or long-term impact of a rule that does not fully take effect for several years. Senator Young responded that the rule requires an agency to consider a rule's annual economic impact after the rule is fully implemented, following any phase-in period.

There being no further questions or comments, Senator Kenley moved that the bill draft be approved by the Committee. The Chairman requested a roll-call vote, and PD 3827 was approved by a vote of 6-0.

Discussion of PD 3829

Next, Representative Hinkle presented PD 3829⁴ for the Committee's consideration. Noting that the bill draft was the result of the Committee's examination of the home and community based services (HCBS) rules adopted by DDARS, Representative Hinkle reported that many HCBS providers had contacted him about the additional paperwork and administrative requirements imposed by the rules. A number of providers had expressed

²See Exhibit 1.

³See LSA #03-270 (published in 27 IR 2571; May 1, 2004). The Committee reviewed a complaint filed concerning these rules at its meeting on September 15, 2004.

⁴See Exhibit 2.

concern that the new requirements would consume time and resources that could otherwise be devoted to delivering services. Accordingly, Representative Hinkle recommended that the Committee approve PD 3829, which would void the HCBS rules adopted by DDARS and require DDARS to adopt new rules not later than January 1, 2006. The bill would require DDARS to consult with consumers and providers to ensure that the new rules would not impose barriers to HCBS by imposing costly or burdensome administrative requirements on providers. Representative Hinkle pointed out that the bill would additionally require DDARS to publish in the Indiana Register the agency's written response to any comments received from interested parties during the rulemaking process.

Given the limited time available for discussion, Representative Hinkle asked for supporters of his proposed legislation to stand. A number of people in attendance stood to signify their support for the proposal. He then invited Annette Biesecker, Legislative Director for the Family and Social Services Administration (FSSA), to offer her views. Ms. Biesecker indicated that FSSA opposed any legislation to void the HCBS rules, which were enacted to protect the safety of Indiana's most vulnerable citizens. She stated that without the rules, FSSA would have limited oversight over HCBS providers and would be unable to monitor the quality of the services provided.

Acknowledging Ms. Biesecker's concerns, Senator Kenley stated that he assumed Representative Hinkle would work closely with FSSA during the legislative process to ensure that the agency's concerns were addressed. Representative Hinkle agreed to do so and expressed confidence that none of the providers with whom he had consulted would do anything to jeopardize the well being of their clients.

Representative Hinkle then moved that the Committee approve PD 3829 and recommended its introduction during the 2005 session of the General Assembly. The recommendation being so moved, a roll call vote was taken. The bill draft was approved by a 6-0 vote.

Update from IDEM on "Rule 13"⁵

Senator Young then asked Tonya Galbraith, Director of Intergovernmental Relations for IDEM, to update the Committee on IDEM's efforts to assist communities in complying with "Rule 13." Ms. Galbraith reminded the Committee that Rule 13 (327 IAC 15-13) was adopted by the Water Pollution Control Board to implement federal requirements concerning local storm sewer systems. She reported that IDEM had established a workgroup to discuss concerns about the Baseline Characterization and Report ("Part B") that each community is required to submit as part of its Storm Water Quality Management Plan (SWQMP) under the rule. Ms. Galbraith indicated that the workgroup had met on October 19, 2004, to clarify what was expected of local communities that had been given a notice of deficiency (NOD) letter in response to their Part B submission. At that meeting, IDEM staff explained that Part B revisions would not require the resubmission of documentation, but a simple addendum to previously submitted documents. IDEM also clarified that it encourages communities to use existing data in determining a baseline characterization for bodies of water affected by storm water run-off.

Noting that communities would soon be required to submit "Part C" (Program Implementation) of the SWQMPs, Ms. Galbraith reported that the workgroup held a second meeting on November 10, 2004, to address those submissions. In an effort to

⁵See Exhibit 3.

prevent the type of confusion surrounding the Part B submissions, IDEM staff discussed requirements for the submission of ordinances, mapping requirements, and timeframes for the submission of annual reports. According to Ms. Galbraith, the parties reached a consensus on the issues discussed and agreed to meet again to discuss best management practices with the Department of Natural Resources.

Additionally, at the request of the Association of Indiana Counties, IDEM prepared an article--to be published in the Association's magazine--that summarizes the workgroup meetings and outlines the next steps in the submission process.

Senator Young asked whether all interested parties were satisfied after the workgroup meetings. Ms. Galbraith indicated that the affected communities were as satisfied as they could be, given the fact that they were having to comply with a costly federal mandate. There being no further questions, Senator Young thanked Ms. Galbraith for informing the Committee about the progress being made in implementing the rule.

Consideration of Final Report and Recommendations

Finally, Senator Young invited Committee members to make any suggestions concerning the Committee's proposed Final Report.⁶ He pointed out that the Report included two recommendations: (1) the approval of PD 3827, which would specify the factors an agency must consider in determining a proposed rule's fiscal impact; and (2) the approval of PD 3829, which would void the HCBS rules adopted by DDARS and require the agency to adopt new HCBS rules that ensure the availability of long term care options.

Representative Murphy asked whether the report included any recommendations concerning the Indiana Board of Accountancy's proposed rules requiring peer reviews for CPA firms. Senator Young indicated that the report did not address the accountancy rules, because the interested parties had assured him that they were attempting to work out a compromise on matters of disagreement. Senator Young indicated that if the parties were unable to reach an agreement by mid December, he would consider bringing the issue before the Committee again.

With Committee members expressing no further concerns, Senator Young called for a roll call vote on the adoption of the Final Report. The report was adopted on a 7-0 vote.

The Chairman adjourned the meeting at 9:40 a.m.

⁶See Exhibit 4.